STATE OF MICHIGAN

COURT OF APPEALS

BEETHOVEN LLC,

Plaintiff-Appellee,

v

RAYMOND DEBATES,

Defendant-Appellant,

and

EFG OF CLINTON TOWNSHIP, LLC

Defendant.

UNPUBLISHED
February 26, 2008

No. 276263
Wayne Circuit Court
LC No. 06-605501-CH

Before: Markey, P.J., and Meter and Murray, JJ.

PER CURIAM.

I. Introduction

Defendant-appellant, Raymond DeBates, appeals as of right from the circuit court's January 24, 2007, order granting plaintiff's motion for summary disposition and quieting title to the disputed property in favor of plaintiff. On appeal, DeBates argues that the circuit court erred when it found that he lacked standing to challenge the sufficiency of the notice that was sent to Patricia Briggs, and further erred when it determined that Patricia was given adequate notice. DeBates contends that Patricia was never sent adequate notice, and therefore, the tax foreclosure on the disputed property (and the subsequent chain of title stemming from the foreclosure) are void, and thus, this Court should reverse the circuit court's order granting summary disposition in favor of plaintiff, and enter an order quieting title to the disputed property in his favor. We disagree with DeBates' arguments and affirm the trial court's January 24, 2007, order.

II. Background

On November 6, 1990 (recorded November 20, 1990), Alyas and Ann Kherkher quit claim deeded "Lots 1, 2 and 4, except the East 4.35 feet of Lot 4, Dunlap's subdivision as recorded in Liber 36, Page 83 of Plats, Wayne County Records" to Patricia "whose address is 26065 Avondale, Inkster, Michigan." On September 4, 1991 (recorded October 10, 1991), the

city of Detroit quit claimed Lot 3, as well as its interest in Lot 4 ("East 4.35 feet of Lot 4") to Patricia whose address "is 701 West Forest, Detroit, Michigan."[1]

On May 3, 1994 (recorded March 13, 1995), the "State Treasurer of the State of Michigan," who had an interest in the West 65.65 feet of Lot 4 (the disputed property) for the non-payment of taxes, conveyed its interest via a state treasurer's deed to the "Department of Natural Resources" of the "State of Michigan." On December 6, 1994 (recorded September 9, 1998, 3 ½ years after Patricia's death), Patricia, who listed her Inkster address, quit claimed her interest in all of the aforementioned property to David and Michael Briggs.

On May 8, 1996, a hearing was conducted regarding the delinquent taxes and foreclosure. Prior to the hearing, notice of the hearing was sent to Patricia's Inkster address, as well as the property's address (4700 Third, Detroit, Michigan 48201). Although the notice to the Inkster address was returned as "unclaimed," the occupant of the disputed property's address, Lloyd J. White, signed certification that he received the notice. On October 9, 1996 (recorded January 29, 1997), the State of Michigan filed proof that it sent an "unclaimed" notice to the Inkster address, as well as notice that was received by the occupant of "4700 Third." After sending notice and conducting a hearing, at which neither Patricia (who was deceased) nor a representative of her estate appeared, the disputed property vested in the State of Michigan.

On March 31, 1997 (recorded July 20, 1998), the "Department of Natural Resources" of the "State of Michigan" conveyed the disputed property via a public use deed to the "City of Detroit." On June 2, 1999 (recorded on October 2, 2000), David quit claimed all of his property interest to Michael for $1.00. On October 18, 2001 (recorded December 19, 2001), the "City of Detroit" quit claimed the disputed property back to the "Department of Natural Resources" of the "State of Michigan." On August 27, 2003 (recorded November 18, 2003), the "Department of Natural Resources" of the "State of Michigan quit claimed the disputed property to Matthew Tatarian and Michael Kelly for $14,500.00. On March 23, 2004 (recorded March 26, 2004), Tatarian and Kelly quit claimed the disputed property to plaintiff for $6,500.00. On January 6, 2006 (recorded January 10, 2006), Michael, "individually and as co-personal representative of the Estate of [Patricia]," quit claimed all of his interest in all of the aforementioned property to DeBates for $1.00.

On February 23, 2006, plaintiff brought an action seeking to quiet title to the disputed property, which plaintiff's complaint described as:

> Dunlaps Subdivision of Lots 21 to 26 inclusive of William A. Butler's Subdivision of Out Lots 102, 104, 106 and that part of Out Lot 108 lying South of Liber 36, Page 83, 83 W 65.65 feet of Lot 4 E. Third and commonly known as 4608-18 Third.

[1] The parties do not dispute the ownership of Lots 1, 2 or 3, nor do they dispute the ownership of the "East 4.35 feet of Lot 4."

DeBates brought a counter claim seeking the same relief. Both parties subsequently requested that summary disposition be granted in their favor. Plaintiff argued that it should be granted summary disposition because it established that it had a valid recorded interest in the disputed property that it received through a valid chain of title that started with a tax foreclosure, and that DeBates could only receive whatever interest Michael had, which did not include the disputed property. Furthermore, DeBates was not a bona fide purchaser because he had constructive notice of plaintiff's interest when he was deeded Michael's interests. DeBates argued that he should be granted summary disposition because "notice of the foreclosure proceedings under which [plaintiff] claims title was never [properly] sent to [Patricia,]" and thus, the tax foreclosure was never valid. Therefore, DeBates eventually received all of Patricia's property interests, which included the disputed property, and plaintiff did not receive a valid interest.

After hearing the parties' arguments on January 5, 2007, the circuit court found that the State of Michigan gave proper notice, and thus, its tax foreclosure taking and the subsequent chain of title through which plaintiff received the disputed property were valid. The circuit court entered an order granting plaintiff's motion for summary disposition and quieting title in its favor. DeBates appeals the circuit court's order as of right.

III. Analysis

We review a trial court's equitable rulings to quiet title and its decision on a motion for summary disposition de novo. *Wengel v Wengel*, 270 Mich App 86, 90-91; 714 NW2d 371 (2006). We affirm the trial court's January 24, 2007, order, on the ground that Patricia was given proper notice, and thus plaintiff obtained a valid interest in the disputed property through a valid chain of title. For the same reason, DeBates did not receive any interest in the disputed property through his chain of title.[2]

Due process "requires that an owner of a significant interest in property be given proper notice and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes." *Dow v Michigan*, 396 Mich 192, 196; 240 NW2d 450 (1976). Notice is proper if it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id*. at 206. Notice by mail, which is "directed to an address reasonably calculated to reach the person entitled to notice," is adequate. *Id*. at 211. "If the state exerts

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[2] DeBates argues that the circuit court erred when it determined that he lacked standing to challenge the sufficiency of the notice given to Patricia, but the trial court never stated that DeBates lacked standing. However, it is unlikely that Debates has standing to collaterally challenge the sufficiency of the notice given to Patricia that led to the judgment of foreclosure. See, e.g., *Gursten v Kenney*, 375 Mich 330, 333-334; 134 NW2d 764 (1965) (holding that certain judicial determinations can only be challenged on direct appeal), *In re Amb*, 248 Mich App 144, 176; 640 NW2d 262 (2001) (holding "it is well settled that the right to notice is personal and cannot be challenged by anyone other than the person entitled to notice"), and *Frey v Scott*, 224 Mich App 304, 307-308; 568 NW2d 162 (1997) (holding that individual plaintiffs did not have standing to challenge whether another individual received proper notice).

reasonable efforts, then failure to effectuate actual notice would not preclude foreclosure of the statutory lien." *Id*.

Here, the State of Michigan sent notice to 26065 Avondale in Inkster, Michigan, which was Patricia's recorded address on the original November 6, 1990 (recorded November 20, 1990) deed to the disputed property.[3] Although the notice sent to the Inkster address was returned as "unclaimed," the applicable law at the time of the foreclosure proceedings did not impose an obligation upon the state "to undertake an investigation" to see if a new address could be located just because the notice it sent was returned as "unclaimed." *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 429; 617 NW2d 536 (2000), abrogated by *Jones v Flowers*, 547 US 220, 225; 126 S Ct 1708; 164 L Ed 2d 415 (2006).[4]

Moreover, and consistent with *Jones*, the State of Michigan also sent additional notice to the actual property (4700 Third in Detroit, Michigan), which was received by the occupant, Lloyd J. White. We therefore conclude that the state's attempts to send notice were reasonably calculated to reach Patricia, and accordingly, the state gave proper notice. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 316; 70 S Ct 652; 94 L Ed 865 (1950); *Dow*, *supra* at 206, 211.

Given that the challenged notice was proper, it follows that the State obtained a valid interest in the disputed property, which vested on May 8, 1996, after the tax foreclosure hearing. Consequently, David and Michael were divested of any interest obtained in the disputed property via the December 6, 1994 (recorded September 9, 1998) deed. *Municipal Investors Ass'n v City of Birmingham*, 298 Mich 314, 326; 299 NW 90 (1941). Accordingly, plaintiff received a valid interest in the disputed property through a valid chain of title, and DeBates did not receive any interest in the disputed property through his chain of title. MCL 565.3; See also *Roddy v Roddy*, 342 Mich 66, 69; 68 NW2d 762 (1955) (holding that "a quitclaim deed transfers any interest the grantor may have in the lands").[5] We therefore conclude that the trial court did not err when it granted plaintiff's motion for summary disposition and quieted title in its favor.[6]

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[3] Patricia also listed her Inkster address when she quit claimed her interest in the disputed property to David and Michael on December 6, 1994 (recorded September 9, 1998). The record reflects that when Patricia was deeded other property from the City of Detroit on September 4, 1991 (recorded October 10, 1991), which is not in dispute in the case at hand, she listed 701 West Forest (a/k/a 700 Prentis) in Detroit, Michigan, as her address.

[4] We note that *Jones v Flowers*, 547 US 220, 225; 126 S Ct 1708; 164 L Ed 2d 415 (2006), which DeBates relies on, held that "when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." Without determining whether *Jones* applies to this case as a matter of law, we note that the state took additional steps by also sending notice to "4700 Third", the property at issue.

[5] Moreover, pursuant to Michigan's race/notice statutes, the priority of property interests generally depends on the order in which those interests are recorded. MCL 565.25; MCL 565.29. Therefore, even if it were found that DeBates received an interest in the disputed

(continued…)

Affirmed.

/s/ Jane E. Markey
/s/ Patrick M. Meter
/s/ Christopher M. Murray

(…continued)

property through his chain of title, his interest would be inferior to plaintiff's interest because plaintiff recorded its interest in the disputed property years before Debates received a quitclaim deed from Michael.

[6] Defendant's attempt to challenge the notice given during the foreclosure proceedings is also likely untimely, as MCL 211.431 provides:

> After the expiration of 6 months from and after the time when any deed made to the state under . . . the general tax law[s], and acts amendatory thereto, shall have been recorded in the office of the register of deeds for the county in which the land so deeded shall be situated, the title of the state in and to the same shall be deemed to be absolute and complete, and no suit or proceeding shall thereafter be instituted by any person claiming through the original or government title to set aside, vacate or annul the said deed or the title derived thereunder.